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2018.08.03

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August 3, 2018

Mr. Jeff S. Jordan
Assistant General Counsel
Office of Complaints Examination
and Legal Administration
Federal Election Commission
1050 First Street, N.E.
Washington, D.C. 20463

Re: MUR 7417

Dear Mr. Jordan:

The undersigned serves as counsel to Dr. Kim Schrier for Congress, and Philip Lloyd, in his official capacity as Treasurer (the "Schrier Campaign"). This letter responds on behalf of the Schrier Campaign to the Commission's notification that it received a complaint (the "Complaint") alleging that the Schrier Campaign violated the Federal Election Campaign Act (the "Act") and Federal Election Commission (the "Commission") regulations.

This matter was initiated by a Complaint filed against Indivisible Washington's 8th District ("Indivisible") alleging its failure to register with the Commission as a political committee and failure to file the disclosure reports required of political committees. The Schrier Campaign was included as a respondent because of its participation in a candidate forum hosted by Indivisible, which the Complainant claims to have resulted in an in-kind contribution to the Schrier Campaign.

Indivisible is a non-partisan, unincorporated group of individuals who engage in grassroots community activities. The March 13, 2018 event was a forum that was open to all candidates in Washington's 8th District, regardless of party affiliation, that aligned with the group's statement of values. Any expenses incurred by Indivisible to secure the space for the open forum were not made on behalf of or in support of any of the participating candidates. It is our understanding and belief that any incurred expenses were *de minimis*. Under the Act, "nonpartisan activity designed to encourage individuals to vote" is excluded from the definition of "expenditure."¹ Because Indivisible did not make any expenditures, the Schrier Campaign did not receive a contribution, in-kind or otherwise, due to its participation in the forum.

Furthermore, the Commission's debate regulations, which provide a permissible way for corporations to defray the costs of candidate debates, are not applicable to unincorporated entities, such as Indivisible.² Even if relevant here, the Complaint provides no substantive

¹ 52 U.S.C. § 30101(9)(B)(ii); 11 C.F.R. § 100.133. See also, *Becker v. FEC*, 112 F.Supp.2d 172, 181 (D.Mass. 2000) (explaining that candidate debates "educate voters and spark enough interest to motivate them to vote or register to vote" which "is fully consistent with the express legislative intent to permit a nonpartisan organization to get-out-the-vote and encourage voter registration.").

² 11 C.F.R. §§ 110.13; 114.4(f).

evidence to suggest that Indivisible did not comply with the debate regulations. The forum included at least two candidates; was not structured to promote or advance one candidate over another; and candidates were invited based on pre-established objective criteria—their commitment to Indivisible's mission statement.³

The Complaint provides no substantive evidence to suggest the Schrier Campaign received an in-kind contribution as a result of its participation in Indivisible's candidate forum. Any costs related to that forum were *de minimis* and excluded from the Act's definition of "expenditure." Other than the Schrier Campaign's participation in the candidate forum, the Complaint contains no facts or allegations to demonstrate a violation of the Act or the Commission's regulations by the Schrier Campaign. Without any specific allegations or facts supporting a violation of the Act, the Commission should dismiss this Complaint as it relates to the Schrier Campaign.⁴ Even if the Commission were to find reason to believe the Schrier Campaign may have violated the Act, the Commission should use its prosecutorial discretion to dismiss the matter against the Schrier Campaign due to the *de minimis* nature of the costs at issue and the Schrier Campaign's passive involvement in the forum.

If you have any questions regarding this Response, my daytime number is (202) 479-1111. My email address is reiff@sandlerreiff.com.

Sincerely,



Neil P. Reiff
Counsel to Dr. Kim Schrier for Congress
Philip Lloyd, Treasurer

³ 11 C.F.R. § 110.13(b), (c).

⁴ See, MUR 5952 (Hillary Clinton for President) where the Commission found no reason to believe a violation occurred when the Complaint failed to provide any specific allegations or factual information to support the alleged violation.

Schwerin Campbell Barnard Iglitzin & Lavitt LLP

ATTORNEYS AT LAW

Of Counsel Lawrence Schwerin

LAURA EWAN
ewan@workerlaw.com

Sent via email to CELA@fec.gov
And via US First Class Mail

July 23, 2018

Federal Election Commission
Office of Complaints Examination and Legal Administration
Attn: Donna Rawls, Paralegal
1050 First Street, NE
Washington, DC 20436

RE: Indivisible Washington's 8th District, MUR #7417
SCBIL File No. 8013-003

Dear Commissioners:

On behalf of Indivisible Washington's 8th District, we are hereby responding to the allegations raised by Dennis Olson in the above-referenced matter.

Mr. Olson's allegations are absolutely unfounded, as described herein. Several of the unfounded allegations seem to be based on a fundamental misunderstanding of the difference between free speech and electioneering communications; others are premised entirely on false information. Therefore, dismissal is the most appropriate course of action here.

First, we will explain Indivisible Washington's 8th District purpose and mission. Then, we will address each issue raised by Mr. Olson in turn.

Indivisible Washington's 8th District

Indivisible Washington's 8th District is a grassroots group of individuals committed to progressive values, and is an offshoot of the national Indivisible grassroots movement. This commitment to progressive values—and to opposing the harmful agenda promulgated by the current administration in Washington—extends to any candidate who represents this district, regardless of party affiliation.

Indivisible Washington's 8th District convened a committee representing a coalition of independent grassroots organizations across the district (without outside involvement from party officials or from any candidate members) to write a statement of values, and any candidate seeking an endorsement had to agree with the statement. The candidates who met the minimum threshold established by the grassroots coalition were invited to multiple candidate forums throughout the district. These forums were hosted by different coalition groups without party or candidate involvement. The forums were intended to provide members of these groups with an

opportunity to see and hear from the candidates in order to make an informed vote in the coalition endorsement.

Independence from the party system is key to Indivisible Washington's 8th District in order to allow greater credibility to an endorsement from such a large group of constituents from grassroots organizations.

The Allegations in Mr. Olson's Complaint

"1. PARTISAN INTENT"

Mr. Olson's entire complaint is premised on the flawed assumption that the activities of Indivisible Washington's 8th District are reportable, and completely ignore the First Amendment-protected rights of citizens to voice their opinions collectively through an organization of like-minded individuals.

While "Partisan Intent" is not itself a violation of any law, Mr. Olson uses posts on Facebook pages and groups to support his allegation that "Spending and fundraising undertaken by the organization" is for "an explicitly partisan purpose." See Complaint by Dennis Olson ("Complaint") at pg. 2. First, expressing a desire for a progressive candidate to win the election is not an "explicitly partisan purpose."

To support his allegations, he starts with a post on the "Ellensburg Indivisible" Facebook group page—a group that shares common political perspectives but is not a group controlled by Indivisible Washington's 8th District—by a private citizen, and expresses her opinion of the "only agenda" for groups that she does not control. Complaint at pg. 3. Regardless, her statement does not create a violation of the law (or any sort of reporting requirement) by Indivisible Washington's 8th District or by anyone else. Posting comments (such as endorsements) in connection with a federal election, whether done by individuals or a group of individuals, incorporated or unincorporated, is exempt from regulation. 11 CFR 100.155(a), (b).

Likewise, pages 4-5 of the Complaint include photographs of citizens engaged in creative and costumed expressions of speech that Indivisible Washington's 8th District posted to its Facebook page. This also does not violate the law or create any sort of reporting requirement. 11 CFR 100.155(a), (b).

In short, the "examples" under "Political Intent" do not show any violation of any law, or any reportable expenditure. This portion of the Complaint must be dismissed outright.

"2. EXHIBITS OF SPENDING AND FUNDRAISING"

Not one of Mr. Olson's alleged examples relating to spending or fundraising actually show reportable or impermissible activities. These allegations must be dismissed outright.

A. Logo Design

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There is nothing that requires a community group, or any other group such as Indivisible Washington's 8th District, to "report" any expenditure associated with the creation of its logo; nor does having a logo prove any sort of violation of campaign finance law.

A member volunteer designed the logo for the group well before the race for the 8th Legislative District commenced. It was designed for a sign that a member took to the Issaquah Farmers Market to pass out information about the group and its mission, and is used on the group's Facebook page and later on its web site.

B. Banner Printing

Likewise, there is nothing that requires a community group, or any other group such as Indivisible Washington's 8th District, to "report" any expenditure associated with the creation of its banner to be used for identification of the group at all manner of events, from rallies and meetings to group photos. While the banner was on display at the candidate forum, it was not created for the forum.

C. Website

When an individual or a group of individuals, acting independently from any candidate, authorized committee, or political party committee, engages in Internet activities for the purpose of influencing a Federal election, uncompensated personal services related to such Internet activities and/or use of equipment or services for uncompensated Internet activities, are *not* considered reportable expenditures. 11 CFR 100.155(a)(1)-(2). The term "Internet activities" includes, but is not limited to, creating, maintaining, or hosting a website. 11 CFR 100.155(b).

Regardless, this website was set up in the spring of 2017, long before the race started. It is the manner for the public to learn about Indivisible Washington's 8th District and learn about their work.

D. PO Box

There is nothing that requires a community group, or any other group such as Indivisible Washington's 8th District, to "report" any expenditure associated with renting a PO Box.

Regardless, the box was paid for more than 15 months ago—well before the race in the 8th began—and the contract was terminated 3 months ago. It was secured because it was required to sign up for MailChimp (an email service), not against or for the benefit of any candidate.

E. Candidate Forum

As previously discussed, Indivisible Washington's 8th District extends its endorsement to any candidate, regardless of party affiliation, that shares its commitment to progressive values.

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Indivisible Washington's 8th District sought \$3 donations from attendees to cover the cost of using the church facility. Donations were also used to cover event insurance and event supplies like American flags and water for attendees.

The forum itself was not conducted in coordination with any political party or candidate; instead, it was an opportunity for the public to hear from candidates with progressive values.

Once event costs were paid, the remaining money (\$150) was donated to the Issaquah Food and Clothing Bank.

F. Merchandise Sales & Purchases

Again, groups such as Indivisible Washington's 8th District are permitted to raise money and make expenditures for internal activities without direct association with individual candidates (i.e., for Indivisible Washington's 8th District itself and its members, or expenditures to keep Indivisible Washington's 8th District alive—such as maintaining its website, PO Box, etc.).

Consistent with this type of activity, members purchase shirts and other items to wear to events and actions to represent our group. Members have worn their shirts on outings to the 8th Legislative District's congressman's office, to multiple protests sponsored by a wide range of groups, and to Indivisible Washington's 8th District group meetings. Merchandise is for group morale purposes only, and proceeds go to paying for donuts and other internal supplies.

While Mr. Olson may bemoan the fact that he is not sharing in the "substantial amount of food" that is present at Indivisible Washington's 8th District meetings, see Complaint at pg. 15, the attendees bring snacks to share with their fellow like-minded progressives and have been doing so long before the eighth congressional district race got started. There is no reportable activity here.

G. Coordination With The Washington State Democratic Party

This allegation is patently false. Indivisible Washington's 8th District expressly does *not* coordinate with any party. The news story provided as "evidence" on page 24 of the Complaint cites a Democratic party official giving "advice" for donors to give to various causes, including "groups like Indivisible." Mr. Olson, with nothing to support his "presumption," wastes this Commission's time by stating that this quote "presumably include[s] the 8th District's group."

Indivisible Washington's 8th District has no mechanism to accept such donations, were they to occur.

Furthermore, 11 CFR 100.155(b) allows for internet activity that "provid[es] a hyperlink or other direct access to another person's website" as unregulated activity. Indivisible Washington's 8th District is therefore allowed to post information about opportunities to learn

more about local campaigns as individuals (vs. being organized by Indivisible Washington's 8th District itself)—which is all publicly-available information about events or volunteer opportunities. Indivisible Washington's 8th District does not coordinate these efforts and does not collaborate with the campaigns.

Re: FedEx Printing

The "cost" cited on page 26 of Mr. Olson's Complaint—\$5.60 spent to print tags in support of a student-led March For Our Lives demonstration against a candidate with an A rating from the NRA—is consistent with Indivisible Washington's 8th District's support of progressive groups. It does not support a political party or a candidate. It is simply not a reportable expense.

Conclusion

Mr. Olson's unsubstantiated rhetoric aside, Indivisible Washington's 8th District wants nothing more than to comply with Federal election law. Indivisible Washington's 8th District asks the Commission to dismiss this matter outright, as it has not engaged in any activity that would be reportable to the Commission in any way.

If you have any questions, or if there is anything we can do to be of additional assistance to you as you investigate this complaint, please do not hesitate to contact us.

Sincerely,



Laura Ewan
Counsel for Indivisible Washington's 8th District

cc: Chris Petzold

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OFFICE OF
GENERAL COUNSEL

2018 AUG 30 AM 11: 27

FEDERAL ELECTION COMMISSION
Washington, DC 20463



Statement of Designation of Counsel

Provide one form for each Respondent/Witness
Note: You May E-Mail Form to: CELA@fec.gov

CASE: MUR# 7417

Name of Counsel: LAURA EWAN

Firm: SCHWERIN CAMPBELL BARNARD IGLITZIN & LAVITT LLP

Address: 18 WEST MERCER ST. STE 400

SEATTLE, WA 98119

Telephone: (206) 257-6012 Fax: (206) 257-6048

The above named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

07/20/2018

Date

Signature

ATTORNEY FOR
INDIVISIBLE WASHINGTON
8TH DISTRICT

Title

RESPONDENT: INDIVISIBLE WASHINGTON 8TH DISTRICT

(Committee Name/Company Name/Individual Named In Notification Letter)

MAILING ADDRESS:

ISSAQUAH, WA 98029

Telephone:(H):

(W):

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person receiving the notification or the person with respect to whom the investigation is made.